

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

(1) TRACY COONS,

Plaintiff,

v.

(2) ALLSTATE INDEMNITY COMPANY,

Defendant.

Case No. 12-CV-597-TLW

Removed from District Court of Tulsa
County - Case No. CJ-2012-04932

NOTICE OF REMOVAL

Defendant, Allstate Indemnity Company, (“Allstate”) respectfully submits this Notice of Removal of the above-styled action to the United States District Court for the Northern District of Oklahoma. This action is now pending in the District Court of Tulsa County, Oklahoma, and docketed as number CJ-2012-04932. Copies of all of the pleadings and process filed in this action to-date are attached as Exhibits 1-3. A copy of the Docket Sheet from the State court action is also attached as Exhibit 4.

On September 19, 2012, Plaintiff filed a Petition that was not removable on its face as it sought only damages “in excess of Ten Thousand Dollars, (\$10,000.00)”.¹ (Ex. 1). However, the Oklahoma Pleading Code requires that Petitions contain allegations that allow a defendant to determine if the amount in controversy has been met for diversity jurisdiction. 12 O.S. §§ 2008(A)(2); 2009(G). On October 19th, Plaintiff filed an Amended Petition in state court with new allegations that, for the first time, made the

¹ Further, Plaintiff had attempted service of process by mailing a summons to Allstate in Northbrook, IL, and not the Oklahoma Insurance Commissioner as required by 36 O.S. § 621. (Ex. 2).

matter removable. Defendant's removal is timely as it removed this matter to federal court within thirty-days of receiving the Amended Petition.

Removal from state court is proper as subject matter jurisdiction now exists under the diversity statute, 28 U.S.C. § 1332. First, the parties are of diverse citizenship. Plaintiff is a citizen of the State of Oklahoma. (Ex. 1, ¶ 1.) Defendant is an Illinois corporation with its principal place of business in Illinois.

Second, the requisite amount in controversy, exclusive of interests and costs, has now been alleged to be in excess of \$75,000.00. "The amount in controversy is ordinarily determined by the allegations of the complaint...." *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995). Here, the Amended Petition clearly demonstrates that Plaintiff seeks at least \$84,000.00 in actual and punitive damages:

Wherefore premises considered the plaintiff prays for judgment against the Defendant **for the cost of a replacement roof, which is in excess of FORTY-TWO Thousand Dollars, (\$42,000.00)...his attorney fees** and such other and further relief as the court deems just and equitable.

Wherefore premises considered, the Plaintiff prays for a judgment against the Defendant **in an amount of \$42,000.00 for punitive damages** and such other relief as the court deems just and equitable.

(Ex. 1, pg. 3, Prayers For Relief)(emphasis added). Plaintiff's requested relief unquestionably reveals that more than \$75,000.00 is in controversy. It also does not include an amount for attorney fees which Plaintiff seeks in this action. Consequently, in light of the new allegations contained in the Amended Petition, the statute's jurisdictional amount is met.

The parties to this action are of diverse citizenship and the requisite amount is in controversy. Therefore, the United States District Court for the Northern District of Oklahoma has original jurisdiction of this matter under the diversity statute, and Defendant is entitled to have this action removed to federal court.

Defendant respectfully requests that the Court assume original jurisdiction of this cause and proceed with it to completion, and to enter such orders and judgments as may be necessary to protect its jurisdiction, or as justice may require.

Respectfully submitted,

s/ RONALD L. WALKER
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CERTIFICATE OF SERVICE

☒ I hereby certify that on October 25, 2012, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing and also sent the attached document via U.S. Post, postage prepaid, to the following:

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s/ RONALD L. WALKER